

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PETER TOPOLSKI,

Case No. 3:24-cv-05878-TMC

Plaintiff,

ORDER DENYING MOTION FOR
RECONSIDERATION

V.

WASHINGTON STATE DEPARTMENT
OF LICENSING,

Defendant.

Before the Court is Defendant Washington State Department of Licensing’s motion for reconsideration (Dkt. 19) of the Court’s order granting in part Defendant’s motion to dismiss (Dkt. 17). The Department asks the Court to revisit its refusal to dismiss Mr. Topolski’s Title VII claim. Dkt. 19 at 1. First, the Department argues that the Court’s statement that the Department did not address the Title VII claim overlooks its reply brief. *Id.* at 1, 4. Second, Defendant argues that Mr. Topolski “failed to articulate a sincerely held religious belief.” *Id.* at 1, 4–5. For the reasons explained below, the Court disagrees and DENIES the motion for reconsideration.

Under this District's Local Civil Rules, "[m]otions for reconsideration are disfavored," and "[t]he court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been

1 brought to its attention earlier with reasonable diligence.” Local Civil Rule 7(h)(1). “[A] motion
 2 for reconsideration should not be granted, absent highly unusual circumstances, unless the
 3 district court is presented with newly discovered evidence, committed clear error, or if there is an
 4 intervening change in the controlling law.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH*
 5 & Co., 571 F.3d 873, 880 (9th Cir. 2009) (citation omitted). “A motion for reconsideration is not
 6 intended to provide litigants with a second bite at the apple.” *Stevens v. Pierce Cnty.*, No. C22-
 7 5862 BHS, 2023 WL 6807204, at *2 (W.D. Wash. Oct. 16, 2023).

8 Both of the Department’s arguments fail to meet this high bar. First, the Department
 9 argues that the Court overlooked an argument in its reply brief in which the Department did
 10 address Mr. Topolski’s Title VII claim directly. Dkt. 19 at 1, 4. The Department is correct that its
 11 reply brief contended that Mr. Topolski had failed to exhaust his administrative remedies, as
 12 required to bring a Title VII claim. *Id.*; *see also* Dkt. 15 at 11 (“To the extent that Plaintiff seeks
 13 relief under Title VII for religious discrimination, he has failed to exhaust administrative
 14 remedies and the Complaint fails to state a claim.”).

15 But failure to exhaust an administrative claim “is an affirmative defense, so the defendant
 16 bears the burden of pleading and proving it.” *See Kraus v. Presidio Tr. Facilities*
 17 *Div./Residential Mgmt. Branch*, 572 F.3d 1039, 1046 n.7 (9th Cir. 2009) (quoting *Bowden v.*
 18 *United States*, 106 F.3d 433, 437 (D.C. Cir. 1997)). “[P]laintiffs ordinarily need not ‘plead on the
 19 subject of an anticipated affirmative defense.’ When an affirmative defense is obvious on the
 20 face of a complaint, however, a defendant can raise that defense in a motion to dismiss.” *Rivera*
 21 *v. Peri & Sons Farms, Inc.*, 735 F.3d 892, 902 (9th Cir. 2013) (quoting *United States v. McGee*,
 22 993 F.2d 184, 187 (9th Cir. 1993)). Thus, a motion to dismiss based on a failure-to-exhaust
 23 defense can only be granted if “the defense is ‘clearly indicated’ and ‘appear[s] on the face of the
 24 pleading.’” *Harris v. Amgen, Inc.*, 717 F.3d 1042, 1060 (9th Cir. 2013) (first citing 5B Charles

1 Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1357 (3d ed. 2004); then citing
 2 *Jones v. Bock*, 549 U.S. 199, 215 (2007)).

3 Thus, the Court will not revisit its denial of the Department’s motion to dismiss
 4 Mr. Topolski’s Title VII claim on the grounds that he failed to exhaust administrative remedies.
 5 The Court may not grant such relief unless failure to exhaust is clear on the face of the
 6 complaint. *See, e.g., Harris*, 717 F.3d at 1060 (citations omitted). That is not the case here.

7 Second, the Department argues that Plaintiff failed to state a claim under Title VII
 8 because he failed to plausibly allege that he held a “bona fide religious belief.” Dkt. 19 at 4
 9 (citations omitted). The Department is correct that “[t]o plead a prima facie case of failure to
 10 accommodate religion under Title VII and FEHA, a plaintiff must allege, among other things,
 11 that []he holds ‘a bona fide religious belief’ that conflicts with an employment requirement.”
 12 *Bolden-Hardge v. Off. of California State Controller*, 63 F.4th 1215, 1222 (9th Cir. 2023) (citing
 13 *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993)).

14 In evaluating whether a plaintiff has alleged a bona fide religious belief, the Ninth Circuit
 15 and Supreme Court have warned courts not to “second-guess[] the reasonableness of an
 16 individual’s assertion that a requirement burdens her religious beliefs.” *Bolden-Hardge*, 63 F.4th
 17 1215, 1223 (9th Cir. 2023) (citing *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725
 18 (2014)). Of course, “[t]his principle does not mean that courts must take plaintiffs’ conclusory
 19 assertions of violations of their religious beliefs at face value.” *Id.* (citing *Oklevueha Native Am.*
 20 *Church of Haw., Inc. v. Lynch*, 828 F.3d 1012, 1016–17 (9th Cir. 2016)). Still, the plaintiff’s
 21 burden to allege a conflict between their religious beliefs and their employment is “fairly
 22 minimal.” *Id.* And a plaintiff’s “religious belief need not be consistent or rational to be protected
 23 under Title VII, and an assertion of a sincere religious belief is generally accepted.” *Billings v.*
 24 *King Cnty.*, No. 2:24-CV-00574-RSL, 2025 WL 437933, at *3 (W.D. Wash. Feb. 7, 2025)

1 (citation omitted). “As long as the plaintiff avoids bare labels and conclusory assertions when
 2 alleging that his beliefs are religious in nature, the reasonableness of the claimed religious beliefs
 3 will not be second-guessed and the sincerity with which the beliefs are held will generally be
 4 accepted at the pleading stage.” *Id.* (citations omitted).

5 Mr. Topolski has met this low threshold. Mr. Topolski requested, and received, an
 6 accommodation based on his sincerely held religious belief. Dkt. 1 ¶¶ 5.13, 5.16, 5.20. *Kather v.*
 7 *Asante Health Sys.*, No. 1:22-CV-01842-MC, 2023 WL 4865533, at *4 (D. Or. July 28, 2023)
 8 (explaining that employee’s “religious exception request sufficiently informed Defendant of how
 9 his bona fide religious beliefs conflict with the COVID-19 vaccine mandate.”); *Billings*, 2025
 10 WL 437933, at *3 (“Plaintiff alleges a system of religious beliefs which forbids vaccinations and
 11 is therefore in direct conflict with his employer’s requirement that he be vaccinated against
 12 COVID-19. Those beliefs were conveyed to the employer with his request for an exemption and
 13 accommodation.”).

14 In the accommodation process, Mr. Topolski asserted that his “conscience is beholden to
 15 God and what He reveals. . . . Where there is any conflict between the mandates of man and the
 16 truths and convictions of God, I must obey God. As such, this requirement for a medical
 17 intervention conflicts with my sincerely held religious beliefs that I am responsible for the body
 18 God gave me, that I must honor it, and that to maintain good conscience I must personally make
 19 decisions that affect it if I can.” Dkt. 1-2 at 20. Throughout, he explains that he is a Christian and
 20 a “follower of Jesus.” *Id.* at 22. And Mr. Topolski provided a letter from his pastor, explaining
 21 that Mr. Topolski is a member of the Sunset Bible Church family. *Id.* at 23–24. Mr. Topolski
 22 clearly explains that taking the vaccine would conflict with his belief that he is responsible for
 23 his body and must honor it as he believes his faith determines. *See id.* at 20–24. At this stage, this
 24 is enough for Mr. Topolski to allege a sincerely held religious belief. *Rolovich v. Wash. State*

1 *Univ.*, No. 22-CV-0319, 2023 WL 3733894, at *3 (E.D. Wash. May 30, 2023) (finding that the
2 plaintiff's general assertion that his Catholic faith was the basis of his objection to the vaccine
3 was satisfactory at the pleading stage to allege a religious conflict with an employment duty);
4 *Thompson v. Asante Health Sys.*, No. 1:23-CV-00486-CL, 2023 WL 7348812, at *5 (D. Or. Sept.
5 21, 2023) (allegation that the plaintiff's "body is sacred" and that "Buddhist mantras guide me in
6 choosing what is best for me, reinforcing my belief that the vaccine is not suitable for me at this
7 time" sufficient to state a claim), report and recommendation adopted, No. 1:23-CV-00486-CL,
8 2023 WL 7326496 (D. Or. Nov. 7, 2023).

9 Thus, the Court also finds the Department's argument that Mr. Topolski failed to plead
10 his religious beliefs unavailing. He has sufficiently plead a sincerely held religious belief.

11 For these reasons, the Department's motion for reconsideration is DENIED. The Clerk is
12 directed to send uncertified copies of this Order to all counsel of record and to any party
13 appearing pro se at said party's last known address.

14 Dated this 13th day of March, 2025.

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17 Tiffany M. Cartwright
18 United States District Judge
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